

SENATE BILL NO. 93

INTRODUCED BY S. KITZENBERG

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A GENERAL INVESTMENT TAX CREDIT;
5 PROVIDING THAT A 3 PERCENT CREDIT FOR QUALIFIED INVESTMENTS IS ALLOWED AGAINST
6 INDIVIDUAL INCOME TAXES OR CORPORATE LICENSE TAXES; LIMITING THE INVESTMENT CREDIT IN
7 ANY 1 YEAR TO NO MORE THAN 45 PERCENT OF THE TAXPAYER'S TAX LIABILITY; PROVIDING FOR
8 A 7-YEAR CARRYOVER OF UNUSED INVESTMENT CREDITS IF THE UNDERLYING INVESTMENT
9 REMAINS IN MONTANA; AMENDING SECTIONS 15-30-161, 15-30-162, AND 15-31-123, MCA; AND
10 PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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14 **Section 1.** Section 15-30-161, MCA, is amended to read:

15 **"15-30-161. Purpose.** The purpose of 15-30-162 is to allow individuals, estates, and trusts, ~~including~~
16 ~~those owning an interest in partnerships and in small business corporations defined in 15-30-1101,~~ to take the
17 investment credit, as provided for in 15-30-162, in order to stimulate capital investment by the small business
18 sector."
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20 **Section 2.** Section 15-30-162, MCA, is amended to read:

21 **"15-30-162. Investment credit.** ~~(4)~~ There is allowed ~~as a~~ an investment tax credit against the tax
22 imposed by 15-30-103. The amount of the credit must be determined pursuant to 15-31-123. ~~a percentage of~~
23 ~~the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code~~
24 ~~of 1954 (26 U.S.C. 38) or as that section may be renumbered or amended. However, rehabilitation costs as set~~
25 ~~forth under section 46 of the Internal Revenue Code of 1954 (26 U.S.C. 46), or as that section may be~~
26 ~~renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed~~
27 ~~for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code~~
28 ~~of 1954 (26 U.S.C. 38), as amended, if the property meets all of the following qualifications:~~

29 ~~—— (a) it was placed in service in Montana; and~~

30 ~~—— (b) it was used for the production of Montana adjusted gross income.~~

1 ~~_____ (2) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under~~
 2 ~~section 46 of the Internal Revenue Code of 1954 (26 U.S.C. 46) or as that section may be renumbered or~~
 3 ~~amended.~~

4 ~~_____ (3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable year~~
 5 ~~may not exceed the taxpayer's tax liability for the taxable year or \$500, whichever is less.~~

6 ~~_____ (4) If property for which an investment credit is claimed is used both inside and outside this state, only~~
 7 ~~a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which~~
 8 ~~is the number of days during the taxable year the property was located in Montana and the denominator of which~~
 9 ~~is the number of days during the taxable year the taxpayer owned the property. The investment credit may be~~
 10 ~~applied only to the tax liability of the taxpayer who purchases and places in service the property for which an~~
 11 ~~investment credit is claimed. The credit may not be allocated between spouses unless the property is used by~~
 12 ~~a partnership or small business corporation of which they are partners or shareholders.~~

13 ~~_____ (5) The investment credit allowed by this section is subject to recapture as provided for in section 47~~
 14 ~~of the Internal Revenue Code of 1954 (26 U.S.C. 47) or as that section may be renumbered or amended."~~

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16 **Section 3.** Section 15-31-123, MCA, is amended to read:

17 **"15-31-123. Investment credit.** (1) The purpose of this section is to allow ~~small~~ businesses to take an
 18 investment credit, as provided for in subsection ~~(3)~~ (2), and to stimulate capital investment by the ~~small~~ business
 19 sector.

20 ~~(2) For the purposes of this section, "small business" means a business that does not have:~~

21 ~~_____ (a) more than 10 shareholders;~~

22 ~~_____ (b) a person who is not an individual (other than an estate or other than a trust described in subsection~~
 23 ~~(8)) as a shareholder;~~

24 ~~_____ (c) a nonresident alien as a shareholder; and~~

25 ~~_____ (d) more than one class of stock.~~

26 ~~(3)~~ (2) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122
 27 an amount equal to:

28 (a) a percentage of the investment credit carryovers; and

29 (b) the investment credit for the tax year.

30 (3) An investment qualifies for a credit allowed with respect to certain if:

1 ~~(a) the investment is depreciable property under section 38~~ sections 46(c) and 48 of the Internal
 2 Revenue Code of 1954, as amended, or as ~~section 38 may be renumbered or amended: 1986, 26 U.S.C. 46(c)~~
 3 and 48 as those sections read prior to November 5, 1990. However, ~~rehabilitation costs as set forth under~~
 4 subject to the limitations provided for certain regulated companies in section 46(a)(2)(F) 46(f) of the Internal
 5 Revenue Code of 1954, or as ~~section 46(a)(2)(F) may be renumbered or amended,~~ are not to be included in the
 6 computation of the investment credit. ~~The credit is allowed for the purchase and installation of certain qualified~~
 7 ~~property defined by section 38 of the Internal Revenue Code of 1954, as amended, if the property meets all of~~
 8 ~~the following qualifications: 1986, 26 U.S.C. 46(f), as that section read prior to November 5, 1990, and if the~~
 9 property is not a motor vehicle under 8,000 pounds gross weight;

10 ~~(a)(b) if the property was placed in service in Montana; and~~

11 ~~(b)(c) if the property was used, for the production of Montana income acquired, constructed,~~
 12 reconstructed, erected, or placed into service after December 31, 2003.

13 ~~(4) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under~~
 14 ~~section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered~~
 15 ~~or amended:~~

16 ~~(5)(4) (a) Notwithstanding the provisions of subsection (4), the~~ The amount of the investment credit for
 17 a tax year is 3% of the amount of qualified investments made during the tax year. The investment credit allowed
 18 for the taxable tax year may not exceed \$500 45% of the tax liability of the taxpayer for that year.

19 ~~(b) If the sum of investment credit carryovers and the amount of credit for the tax year from the credit~~
 20 allowed by subsection (2) exceeds the limitation imposed by subsection (4)(a) for the current tax year, the
 21 excess attributable to the current tax year's credit is an investment credit carryover to the 7 succeeding tax years.
 22 The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the
 23 oldest available unused credit must be used first. The investment credit carryover may be used only as long as
 24 the qualified investment property for which the unused credit was granted remains in Montana.

25 ~~(6)(5) If property for which an investment credit is claimed is used both inside and outside this state,~~
 26 only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of
 27 which is the number of days during the taxable tax year that the property was located in Montana and the
 28 denominator of which is the number of days during the taxable tax year that the taxpayer owned the property.
 29 The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service
 30 the property for which an investment credit is claimed.

1 ~~(7)(6)~~ The investment credit allowed by this section is subject to recapture as provided for in section
 2 ~~47 50~~ of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended
 3 1986, 26 U.S.C. 50. A recapture of the credit allowed by this section is not required with regard to property
 4 ceasing to qualify by reason of an involuntary conversion within the meaning of section 1033 of the Internal
 5 Revenue Code of 1986, 26 U.S.C. 1033.

6 ~~(8) (a)~~ For purposes of subsection ~~(2)(b)~~, any of the following trusts may be a shareholder without
 7 disqualifying the business for the investment credit:

8 ~~—— (i)~~ a trust all of which is treated as owned by the grantor under sections 671 through 678 of the Internal
 9 Revenue Code;

10 ~~—— (ii)~~ a trust created primarily to exercise the voting power of stock transferred to it;

11 ~~—— (iii)~~ any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day
 12 period beginning on the day on which such stock is transferred to it.

13 ~~—— (b)~~ In the case of a trust described in subsection ~~(8)(a)(ii)~~, each beneficiary of the trust shall be treated
 14 as a shareholder.

15 (7) If a small business corporation, as defined in 15-30-1101, qualifies for the credit provided for in this
 16 section, the credit must be attributed to the shareholders based upon the proportion used to report the
 17 corporation's income or loss for Montana income tax purposes.

18 (8) An investment credit claimed under this section may be claimed after any other tax credit to which
 19 the taxpayer may be entitled."

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21 NEW SECTION. Section 4. Effective date. [This act] is effective January 1, 2004.

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23 NEW SECTION. Section 5. Applicability. [This act] applies to tax years beginning after December
 24 31, 2003.

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